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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re CARLOS F., A Person Coming Under
The Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS F.,

Defendant and Appellant.

F043293

(Super. Ct. No. 03-56459)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Hugo J. Loza, Commissioner.

Francia M. Welker, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Stephen G. Herndon and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Dibiaso, Acting P.J., Cornell, J., and Dawson, J.

In his first appearance before the juvenile court, Carlos admitted allegations that he committed second degree robbery while personally using a firearm (Pen. Code, § 211, subd. (c)(2), § 12022.53, subd. (b)). At the contested dispositional hearing, the probation officer and the prosecutor recommended that Carlos be placed at the California Youth Authority (CYA). Defense counsel argued strenuously for a less restrictive placement because the crime was “an aberrant act by an otherwise good kid.” The court adjudged Carlos a ward of the court (Welf. & Inst. Code, § 602) and committed him to CYA for a period not to exceed 15 years, less 51 days of custody credit. On appeal, Carlos contends the court abused its discretion in sending him to CYA. We disagree and will affirm the orders of the juvenile court.

FACTS

On April 10, 2003, a week before his 16th birthday, Carlos and his 18-year- old cousin Ricardo entered the Tipton Food Center wearing masks and gloves. Ricardo was armed with a 9-millimeter handgun; Carlos carried a TEC-9 type weapon, which witnesses described as a machine gun. Ricardo and Carlos demanded that the store clerks put the money in the cash registers in black bags that the youths pulled from their waistbands. They told one clerk to get behind the soda machine and the other clerk to get on the ground and stay down as they left the store. The clerks called the police and described the car Ricardo and Carlos had left in.

A short time later, the police located the car and a chase at speeds in excess of 100 miles an hour ensued. The car eventually crashed in a vineyard and Ricardo and Carlos were arrested. Officers found two weapons in the car: a TEC-9 weapon, with a round in the chamber and the safety off and an unloaded 9-millimeter semiautomatic weapon with a loaded magazine nearby. The officers also found black ski masks and gloves, and two plastic bags containing \$2,756.

Carlos told officers he had argued with his parents and wanted to “do something.” He and Ricardo decided to rob a business. They chose the Tipton Food Center because

they thought it would be easy to rob given its remote location. Carlos obtained one gun from an “unknown friend” and the other from his father’s safe. They bought the masks and obtained the bags to put the money in at a market. They used Ricardo’s car and Ricardo drove.

Carlos told the probation officer preparing the probation report that he did not know why he had committed the robbery—“maybe for the money.” He claimed he was unaware the guns were loaded, and both guns belonged to his father. He was sorry for scaring the store clerks.

At the disposition hearing, Carlos’s mother testified that Carlos was one of five children from a close, self-supporting family. She was very surprised by his criminal conduct and thought he was in school when the offense occurred. She had argued with him the day before when he had failed to take out the trash and a couple of days before that he had told her he needed more freedom. She and her husband both worked, they gave Carlos an allowance, and she was a very strict parent. Carlos had never been a problem before. Finally, Carlos had told her, while he was detained in juvenile hall, that he was sorry he had committed the robbery and shamed his family. She believed his remorse was sincere and that he would not reoffend.

In deciding to place Carlos at CYA, the court expressly applied the factors set forth in Welfare and Institutions Code section 202. The court noted that Carlos came from “a very good family,” and had no prior history of criminal conduct. And, while Carlos had a problem with school attendance, he had no other significant issues. On the other hand, he had committed a serious and violent offense that merited a maximum term of confinement of 15 years. The court noted that in enacting the “ten-twenty-life statute,” the California Legislature had determined that using a firearm in the commission of an offense warranted a lengthy period of incarceration. Further, this was not the sort of unsophisticated, spur-of-the-moment robbery that juveniles usually committed. Based on these factors, the court committed Carlos to CYA on appropriate findings.

DISCUSSION

Carlos contends the court abused its discretion in sending him to CYA for his first juvenile criminal adjudication and the court's failure to make any effort to find a suitable alternative to CYA failed both the minor and society. He concedes that under Welfare and Institutions Code section 602.3, he must be confined because he personally used a firearm in the commission of a violent felony. He argues, however, that he should have been placed at a residential juvenile ranch or camp because, unlike many wards in the juvenile justice system, he has strong family and community support. Further, the CYA commitment has "set [him] up to be groomed to be a serious felon by his newly acquired peers at CYA." We are not persuaded.

The appellate court reviews a commitment decision for abuse of discretion, indulging all reasonable inferences to support the juvenile court's decision. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.) Nonetheless, when the minor is committed to CYA, there must be evidence in the record demonstrating both a probable benefit to the minor by the commitment and the inappropriateness or ineffectiveness of less restrictive alternatives. (*In re Pedro M.* (2000) 81 Cal.App.4th 550, 555.) A CYA commitment may be considered without previous resort to less restrictive placements. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) And, circumstances in a particular case may indicate the desirability of a CYA commitment despite the availability of alternative dispositions such as placement in a local facility. (*In re John H.* (1978) 21 Cal.3d 18, 27.) Circumstances indicating that a less restrictive placement would be ineffective or inappropriate include the need to hold the minor accountable for his actions and the community's interest in protection from crime. (Welf. & Inst. Code, § 202, subds. (a), (b); see, e.g., *In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473 [CYA commitment appropriate for first offense of carjacking and armed assault]; accord, *In re Travis W.* (2003) 107 Cal.App.4th 368, 379-380 [CYA commitment appropriate for armed

carjacking by minor without family support[.]) Reviewed under this standard and in light of these principles, Carlos's contention fails.

Here, the court balanced the three concerns of the juvenile court law: holding the minor accountable, community safety, and the minor's rehabilitation. The court was fully satisfied that Carlos's qualifications were such that he would benefit by the treatment and training offered at CYA. The court focused on the fact that Carlos was the driving force behind a premeditated armed robbery. There was a degree of sophistication in that the robbery was planned and premeditated. Carlos had obtained both weapons, one of which was described as a "machine gun." Based on the fact that one of the guns was loaded and the other had ammunition nearby when it was seized, the court concluded that both weapons had been loaded at the time of the robbery. Further, the target of the robbery was purposefully selected for its isolated location. And while Carlos did not expressly threaten violence during the crime, the threat of violence was implicit in his act of pointing the gun at the victims who felt "like someone was going to take their lives." The court could reasonably conclude that the circumstances of this offense warranted the sternest response available under juvenile court law in order to protect society and hold Carlos accountable for his actions.

The record also supports the conclusion that Carlos would benefit from the education programs available at CYA. Carlos's school performance was poor. He had a 0.86 GPA and had received 11 discipline referrals for being a habitual truant. While Carlos's mother blamed her son's absences on his "ride" not picking him up for school, the court could conclude that Carlos's school performance would improve from the structure and discipline available at CYA. A CYA commitment made with some punitive purpose is proper where consistent with the rehabilitative purposes of the Juvenile Court Law and not retributive. (*In re Tyrone O.* (1989) 209 Cal.App.3d 145, 152.)

Carlos argues the CYA placement is inappropriate because he is remorseful and thus not likely to reoffend. However, the probation officer, who interviewed him prior to

disposition, did not feel that Carlos showed remorse for his actions. Most of the remorse evidence came from testimony by Carlos's mother, who understandably tried to place her son in the most positive light for the court.

The record also reflects the inappropriateness or ineffectiveness of less restrictive placements. The probation report concluded that Carlos's violent behavior could not be adequately treated locally. First, Carlos could not be returned home because he presented a danger to society. Second, placement in a group or foster home setting was inappropriate given the violent nature of his offense. And third, placement in a local 60 to 90 day short-term program was not considered because the probation officer and the court believed that Carlos needed to serve a longer period of commitment in a facility where he could receive counseling services, which would promote rehabilitation.

Carlos's reliance on case law such as *In re Aline D.* (1975) 14 Cal.3d 557, 564, and its progeny, which refer to CYA as the "placement of last resort," is misplaced. Those cases predate the 1984 amendments to the juvenile court law, which reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public. (*In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473.) Under current legal authority, Carlos cannot demonstrate that the court's decision to commit him to CYA for his first offense--a sophisticated armed robbery--constitutes an abuse of discretion.

DISPOSITION

The judgment is affirmed.